VPH

IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6041 OF 2007

The Chairman,
The Karad Urban Co-Op. Bank
Ltd. & Ors. Petitioners

Vs.

Madhukar Laxman Thorat Respondent

Mr. A. P. Vanarse, advocate for petitioner.

Mr. Milind Deshmukh, advocate for respondent.

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CORAM: Smt. NISHITA MHATRE, J.

DATE : OCTOBER 24, 2007.

PC :

1. The petitioners challange the order of the Labour Court passed in complaint (ULP) No. 23 of 2006 and of the Industrial Court in Revision Application (ULP) No. 21 of 2007. The Labour Court by its order dated 31st March 2007 has granted interim relief in favour of the respondent employee, directing the petitioners to permit the respondent employee to work in the establishment as before on a temporary basis. The order in the Revision Application passed on 21st July 2007

confirms the order of the Labour Court. However, these orders do not take into consideration an application filed by the petitioners on 8th August, 2006, wherein they had raised a preliminary contention that the complaint was not maintainable, since the respondent employee was not covered by the definition of employee under Section 3(13) of Bombay Industrial Relations Act 1946. It appears that Labour Court had directed the petitioners to produce certain documents. However, without waiting for those documents to be produced, the Labour Court decided the application filed by the respondent employee.

2. In my opinion therefore, the Labour Court and the Industrial Court have erred in deciding the interim application without first deciding whether the respondent is an employee, as defined under S. 3(13) of the B.I.R. Act, read with Sec. 3(5) of the MRTU and PULP Act 1971. The Labour Court ought to have first decided this issue which goes to the root of the jurisdiction vested in it. Without expressing any opinion on the validity of the impugned order in the present petition. the petition is disposed of with following direction:

(i) The orders impugned in the present petition shall not be implemented till the Labour Court decides the preliminary issues regarding its jurisdiction and the maintainability of the complaint, on the ground that respondent is not an employee under the aforesaid provisions of law. The Labour Court shall decide the application filed by the petitioner on 8th August 2006 within six months from today. In the event, the Labour Court concludes that the respondent is an employee, the orders which are held in abeyance, shall be implemented and executed.

(ii) The petitioners may challange the order impugned in this Writ Petition, in the event the complaint or any interim orders are decided against them.

Sd/-
(Smt. NISHITA MHATRE J.)